

Emanuel Kataev

From: jbarton@csm-legal.com
Sent: Tuesday, November 21, 2023 2:32 PM
To: Emanuel Kataev
Cc: mary@csm-legal.com
Subject: RE: Calle v. Pizza Palace Cafe LLC, et al.; Case No.: 1:20-cv-4178 (LDH) (LB).
Attachments: 2023-11-21 TC2 Stipulation Vacating Default Final.pdf; 2023-11-21 Letter Motion to Vacate Default Extend Time to Answer and for Mediation Referral Order - Final.pdf

Follow Up Flag: Follow up
Flag Status: Completed

Best,

Jesse S. Barton, Esq.
Of Counsel
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New York, NY 10165
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From: Emanuel Kataev <Emanuel@mllaborlaw.com>
Sent: Tuesday, November 21, 2023 2:31 PM
To: jbarton@csm-legal.com
Cc: mary@csm-legal.com
Subject: RE: Calle v. Pizza Palace Cafe LLC, et al.; Case No.: 1:20-cv-4178 (LDH) (LB).

I ran a compare and this is acceptable. Please send me fully executed stipulation and final letter motion in PDF format so I can file before my hearing.

Thanks,

Emanuel Kataev, Esq.
Partner
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3000 Marcus Avenue, Suite 3W8
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Subject: RE: Calle v. Pizza Palace Cafe LLC, et al.; Case No.: 1:20-cv-4178 (LDH) (LB).

See attached and advise.

Best,

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From: Emanuel Kataev <Emanuel@mllaborlaw.com>
Sent: Tuesday, November 21, 2023 2:17 PM
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Cc: mary@csm-legal.com
Subject: RE: Calle v. Pizza Palace Cafe LLC, et al.; Case No.: 1:20-cv-4178 (LDH) (LB).

I'll remove the declaration but want to file this as a motion.

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From: jbarton@csm-legal.com <jbarton@csm-legal.com>
Sent: Tuesday, November 21, 2023 2:08 PM
To: Emanuel Kataev <Emanuel@mllaborlaw.com>
Cc: mary@csm-legal.com
Subject: RE: Calle v. Pizza Palace Cafe LLC, et al.; Case No.: 1:20-cv-4178 (LDH) (LB).

Emanuel:

You don't need a motion here or a declaration. Attys for Plaintiff are consenting to the vacatur. If you want to put in a cover letter for the stip that's fine but a declaration regarding service is way too much.

Best,

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To: jbarton@csm-legal.com
Cc: mary@csm-legal.com
Subject: RE: Calle v. Pizza Palace Cafe LLC, et al.; Case No.: 1:20-cv-4178 (LDH) (LB).

See attached. Please confirm consent to file and kindly send back fully executed stipulation.

Thanks,

Emanuel Kataev, Esq.
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From: jbarton@csm-legal.com <jbarton@csm-legal.com>
Sent: Monday, November 20, 2023 4:49 PM
To: Emanuel Kataev <Emanuel@mllaborlaw.com>
Cc: mary@csm-legal.com
Subject: RE: Calle v. Pizza Palace Cafe LLC, et al.; Case No.: 1:20-cv-4178 (LDH) (LB).

Yea let me see letter

Best,

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From: Emanuel Kataev <Emanuel@mllaborlaw.com>
Sent: Monday, November 20, 2023 4:56 PM
To: jbarton@csm-legal.com
Cc: mary@csm-legal.com
Subject: RE: Calle v. Pizza Palace Cafe LLC, et al.; Case No.: 1:20-cv-4178 (LDH) (LB).

See attached for review and execution. Kindly let me know whether I am authorized to accept all changes, add your electronic signature, and whether you'd like to see the letter motion I referenced before I file that.

Thanks and best,

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From: Emanuel Kataev
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To: jbarton@csm-legal.com
Cc: mary@csm-legal.com
Subject: RE: Calle v. Pizza Palace Cafe LLC, et al.; Case No.: 1:20-cv-4178 (LDH) (LB).

Okay.

From: jbarton@csm-legal.com <jbarton@csm-legal.com>
Sent: Monday, November 20, 2023 4:33 PM
To: Emanuel Kataev <Emanuel@mllaborlaw.com>
Cc: mary@csm-legal.com
Subject: RE: Calle v. Pizza Palace Cafe LLC, et al.; Case No.: 1:20-cv-4178 (LDH) (LB).

In order to release the bank account I need this so ordered and an answer date. This is a request for mediation, not an automatic referral so I don't want the case just languishing. How about an answer date 60 days out? That's the best I can do.

Best,

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Cc: mary@csm-legal.com

Subject: RE: Calle v. Pizza Palace Cafe LLC, et al.; Case No.: 1:20-cv-4178 (LDH) (LB).

Pending mediation works; see attached and feel free to further revise in redline. I will file with my notice of appearance and a combined: (i) consent letter motion for extension & vacatur; and (ii) joint letter motion for a mediation referral order.

Let me know if you want to see letter before I file.

Best,

Emanuel Kataev, Esq.

Partner

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Emaneul:

See attached. I modified the last para to add an answer deadline. I've cc'd the atty who will be handling for Plaintiff, Mary Bianco. If you guys want to stip out the answer deadline pending mediation sure that will be fine, but uncomfortable with a sine die extension here. Let me know.

Also, be advised that I will need to submit a release to the bank once this is filed, and that process can take a couple days.

Best,

Jesse S. Barton, Esq.

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From: Emanuel Kataev <Emanuel@mllaborlaw.com>
Sent: Monday, November 20, 2023 3:07 PM
To: jbarton@csm-legal.com
Subject: RE: Calle v. Pizza Palace Cafe LLC, et al.; Case No.: 1:20-cv-4178 (LDH) (LB).

Jesse:

Pleasure speaking earlier; please see attached for your review per our calls.

Best,

Emanuel Kataev, Esq.
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From: jbarton@csm-legal.com <jbarton@csm-legal.com>
Sent: Monday, November 20, 2023 9:13 AM

To: Emanuel Kataev <Emanuel@mllaborlaw.com>
Subject: RE: Calle v. Pizza Palace Cafe LLC, et al.; Case No.: 1:20-cv-4178 (LDH) (LB).

You around? Just tried you.

Best,

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From: Emanuel Kataev <Emanuel@mllaborlaw.com>
Sent: Sunday, November 19, 2023 1:35 PM
To: jbarton@csm-legal.com
Subject: Re: Calle v. Pizza Palace Cafe LLC, et al.; Case No.: 1:20-cv-4178 (LDH) (LB).

For Settlement Purposes Only

Dear Jesse:

I have been retained to represent Mr. & Mrs. Alexander & Tatiana Ishakov in the above-referenced case. They came to me with mail sent to them from JP Morgan Chase Bank, N.A. concerning an information subpoena with restraining notice. I am in the process of preparing a motion pursuant to Rule 60 of the Federal Rules of Civil Procedure. Before I do so, I write to provide the following facts for your consideration to see whether Plaintiff would consent to voluntarily vacate the default, proceed with this case on the merits, and explore resolution.

- Mr. Ishakov was never properly served with the summons and complaint in this case.

- Neither he nor any of the other principals of the business wore glasses as described in the various affidavits of service in this case.
- Mr. Ishakov had no ability to understand that the complaint was directed at him because he was never properly named in the complaint
 - While the information subpoena says it is directed to Sasha Ishaqov a/k/a Alexander Ishakov, the complaint only references the first iteration of the name, and he had no way of knowing that this relates to him.
- Mr. Ishakov is not the principal of Pizza Palace Café LLC and has never had any membership interest in that entity.
- Mr. Ishakov immigrated to the United States of America in 2005 at the age of thirty-five (35) years old and has a limited understand of the English language.
- In 2022, Mr. Ishakov earned no income and filed a joint tax return with his wife indicating gross income at approximately \$120,000.00, exclusively from Mrs. Ishakov.
- In 2021, Mr. Ishakov earned no income and filed a joint tax return with his wife indicating gross income at approximately \$104,000.00, exclusively from Mrs. Ishakov.
- In 2020, Mr. Ishakov earned no income and filed a joint tax return with his wife indicating gross income at approximately \$100,000.00, exclusively from Mrs. Ishakov.
 - Mr. Ishakov only received unemployment compensation at this time.
- The funds restrained belong exclusively to Mrs. Ishakov and are exempt according to Article 52 of the CPLR.
- Mr. Ishakov never hired, fired, set the schedules nor the wages of any employee, let alone the Plaintiff Hitler Calle.

Emanuel Kataev, Esq.

Partner

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TELEPHONE (516) 328-8899
FACSIMILE (516) 328-0082

November 21, 2023

VIA ECF

United States District Court
Eastern District of New York
Attn: Hon. LaShann DeArcy Hall, U.S.D.J.
225 Cadman Plaza East
Courtroom 4H North
Brooklyn, NY 11201-1804

Re: Calle v. Pizza Palace Cafe LLC, et al.
Case No.: 1:20-cv-4178 (LDH) (LB)

Dear Judge Hall:

This office represents the Defendants Sasha Ishaqov, Yuri Ishaqov, and Vlady Djouraev (hereinafter the “Individual Defendants”) in the above-referenced case. Defendants write, with Plaintiff’s consent, to respectfully request that this Court vacate the default judgment entered in this case on January 31, 2022 pursuant to Rule 60 of the Federal Rules of Civil Procedure (hereinafter referred to as “Rules” or “Rule”), and for an extension of time until Friday, January 19, 2024 to respond to the complaint in this case pursuant to Rule 6. The parties also jointly request a mediation referral Order pursuant to Local Civil Rule 83.8 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York (hereinafter “Local Civil Rules” or “LCR”).

This Court Should Vacate the Default Judgment

Rule 60 provides that, on motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding because of mistake, inadvertence, surprise, or excusable neglect. See Fed. R. Civ. P. 60(b)(1). In this case, and as set forth in the attached declaration of Alexander Ishakov, incorrectly sued herein as Sasha Ishaqov, the Individual Defendants aver that they were never properly served and had no knowledge of this case until judgment enforcement action was taken less than two (2) weeks ago. Upon learning of this suit, your undersigned was retained and contacted Plaintiff. While Plaintiff maintains that service in this case was proper, in order to avoid motion practice, – whereupon the parties have entered into the annexed stipulation vacating the default judgment, among other things. Based on the foregoing, it is respectfully submitted that this Court should “so Order” the stipulation.

This Court Should Exercise its Discretion in Favor of Extending Defendants’ Time to Answer

Consistent with Section I(E) of this Court’s Individual Practices, the Individual Defendants submit that:

(a) the original deadline to respond to the complaint has long ago expired in or about October 2020;

(b) an extension of time is necessary because the Individual Defendants' position is that they were never properly served and now wish to defend this case on the merits upon learning of the existence of this case;

(c-d) there have no previous requests for an extension of time to respond to the Plaintiff's complaint;

(e) Plaintiff consents to the instant requested extension, as is evidenced by the attached executed stipulation; and

(f) The Individual Defendants are unaware of any other scheduled dates affected by the requested extension of time.

Accordingly, the Individual Defendants respectfully submit that there is good cause and excusable neglect for this Court to exercise its discretion in favor of granting the requested extension of time. See Fed. R. Civ. P. 6(b)(1)(B).

This Court Should Enter a Mediation Referral Order

The parties jointly request a mediation referral Order pursuant to Local Civil Rule 83.8. Rule 1 requires the court and the parties to construe, administer, and employ the Rules to secure the just, speedy, and inexpensive determination of every action and proceeding. See Fed. R. Civ. P. 1. Moving forward with litigation in this case will be costly and time-consuming. Accordingly, this Court should grant the parties' joint request such that they may work towards resolving this case, especially in light of the fact that the Individual Defendants have not been involved in the business that employed the Plaintiff for over two (2) years.

The Individual Defendants thank this Court for its time and attention in this case.

Dated: Lake Success, New York
November 21, 2023

Respectfully submitted,

MILMAN LABUDA LAW GROUP PLLC

/s/ Emanuel Kataev, Esq.

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*Attorneys for Defendants
Sasha Ishaqov,
Yuri Ishaqov, and
Vlady Djouraev*

VIA ECF

CSM LEGAL, P.C.

Attn: Jesse Barton and Mary Bianco, Esqs.

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Attorneys for Plaintiff

Hitler Calle